

**LAKE COUNTY BOARD of ADJUSTMENT**  
**September 11, 2013**  
**Lake County Courthouse Large Conference Room (Rm 317)**  
**Meeting Minutes**

**MEMBERS PRESENT:** Sue Laverty, Paul Grinde, Steve Rosso

**STAFF PRESENT:** Joel Nelson, LaDana Hintz, Robert Costa, Diana Cornelius

Sue Laverty, acting chair, called the meeting to order at 4:02 pm

Steve offered corrections to the August 14, 2013 minutes. On pg. 4 in the 2<sup>nd</sup> line of the 4<sup>th</sup> section from the top, he corrected 'it they' to 'if they'. On pg. 5 in the middle of the 2<sup>nd</sup> paragraph, he corrected 'Bob's understand' to 'Bob's understanding and also 3 lines from the bottom of the page, 'assessor buildings' should be 'accessory buildings'. On pg. 6, in the 2<sup>nd</sup> line from the end of the 2<sup>nd</sup> paragraph from the end, he thought it was supposed to be 'and the southern portion' rather than 'in the southern portion'. On pg. 7, in the 3<sup>rd</sup> paragraph in the 4<sup>th</sup> line down he suggested inserting 'and' between two guest houses' and 'if they'd thought about'. In the last paragraph on pg. 7, he suggested adding Donny's last name, since it was the first time he was mentioned. In the last full line of that paragraph, he corrected 'Mike S said it' to 'Mike S said if'. On pg. 8 in the 2<sup>nd</sup> paragraph in the 4<sup>th</sup> line from the bottom, 'used if for a bathroom' needed to change to 'used it for a bathroom'.

**Motion made by Paul Grinde, and seconded by Sue Laverty and Steve Rosso, to approve the August 14, 2013 meeting minutes as corrected. Motion carried, all in favor.**

Sue reminded speakers to speak clearly and loudly for the taping of the meeting and to step to the podium, state their name and speak into the microphone.

**WOLCOTT DENSITY VARIANCE (4:08 pm)**

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2013 meeting file for staff report.). He noted the clip of the density map did not turn out well on pg. 3. He referred to the Wolcott density map that was handed out (see attachments to minutes in the Sept. 2013 meeting file for handout). It was intended to replace the one on pg. 3. Joel asked Robert to clarify that the yellow versus the orange and the community growth area. The colors on the legend were misleading. Robert commented that the colors on the legend didn't match well with the colors on [the map]. The tan almost yellow portion in the upper left corner was the Arlee Community Growth area. The green was the 10-acre per unit area, where the units were currently located. Robert continued with the staff report.

Robert asked if there were questions on the configurations and how they matched up with the site plan. The site plan didn't perfectly show the proposed boundaries but it was all there. Steve checked that one lot was 10 acres plus a little strip. Robert said that was the

10.98-acre parcel. Steve referred to one in the upper corner, which Robert identified as the 0.79-acre piece. The rest was the 3<sup>rd</sup> parcel.

Sue checked that the mobile home or RV was considered a residential unit. It wasn't a temporary dwelling? Robert said it would be, but there was an existing unit that could have been a mobile home or RV or something else that was no longer there. It was currently used for a recreational vehicle. There appeared to have been a mobile home on the property when that system was first put in. Even though it was currently used as an RV, it was a validly existing unit as far as the regulations.

Steve checked who would review the subdivision application if there was one. Robert thought it would go straight to the Board of Lake County Commissioners. Steve said any configuration of the lots might change between now and then. Robert explained that the applicant had been working on this for a long time. He thought that if changes occurred, they would be minimal. Steve described a combination between the square 10-acre piece and the flagpole. He checked that whether or not this would constitute a flag lot, since those were generally avoided and that the configuration and approaches, which might change, would be reviewed as part of the subdivision review. He checked that the BOA didn't need to be concerned that those changes might occur. Robert noted those items would be worked out during the subdivision review. He and Steve reiterated the BOA was looking at whether it could be divided into 3 pieces.

Kelly Wolcott spoke on behalf of his application. This had been in the works for a long time. They tried subdividing one acre off in 1997 but ongoing problems with the highway project weren't resolved until 2010. That was smaller than the Density Regulations allowed, but it was done long before those were changed. It created one new lot and added 0.97 acres to the 10 acres, where the improvements were. It would also be in [inaudible] his business and proceed with their lives, since they were close to retirement age. There were two pieces of property there right now.

Steve thought that was a boundary line adjustment. Robert said Kelly originally approached him with this as a boundary line adjustment. The 10-acre piece was approved for agricultural purposes only. Without subdivision review of the 10 acres, he couldn't go through the boundary line adjustment. In a sense, subdivision review would be both lifting the agricultural restriction and the boundary line adjustment.

Paul thought it looked fine. The neighboring parcel had 5 homes on 6.5 acres, and it was close to a town site. Steve didn't have an objection to the density not matching the Density Map. There were some issues that would be worked out in the future before the plat was finalized.

*Public comment opened: None offered. Public comment closed.*

**Motion made by Paul Grinde, and seconded by Sue Laverty, to approve the variance with staff recommendations and findings of fact. Motion carried, all in favor.**

#### **BOYCE CONDITIONAL USE—FINLEY POINT (4:24 pm)**

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2013 meeting file for staff report.)

Steve pointed out the development site wasn't 16 feet above the level of the lake. The development site ranged from 16 feet to 40 feet above the lake. That was the slope problem. Sixteen feet was the front edge and the back edge was 40 feet above. The development site had significant slope. It was hard to get over 25% grade 200 feet back from the lake if you were only 16 feet above the lake. They could address the condition about revegetating and discuss it after the applicant/agent had a chance to speak.

David Miller, contractor for the applicant, offered to answer questions. Steve asked about the stabilization of the slopes after construction. Were there plans for revegetation and landscaping? David said they would work with Gavin Hanks to explore options. Steve confirmed with David that they wouldn't object to that being put in a condition. David noted there would be some trees, vegetation and brush that would be removed to put this in this location. They could cover that with straw, reseed it and make sure that it came back up and stabilized as well.

*Public comment opened: None. Public comment closed.*

Paul brought up adding a condition. He asked what Steve would suggest for the revegetation condition. Steve suggested a note to restore landscaping to help stabilize any exposed slopes after construction. Maybe they would add the sentence that mentioned the BMP's (best management practices). Sue asked if this was in recommended condition #9, whose last sentence she read. Steve thought maybe that was enough. Sue asked if he wanted more detail. Steve suggested specifying a variety of vegetation sizes, including shrubs and trees. Robert suggested adding 'including a variety of vegetation types and sizes, including trees and shrubs' after slopes [in that sentence]. Sue checked if these regulations had a definition that talked about revegetating, and that a mix of sizes was needed. Robert said this would be within the vegetative buffer strip. He didn't recall this definition appearing there. Steve suggested 'including a variety of trees and shrubs' and Robert thought that would be fine.

**Motion made by Paul Grinde, and seconded by Sue Laverty, to approve the conditional use along with staff recommendations and findings of fact, including the change to condition #9. Motion carried, all in favor.**

#### **VALETT VARIANCE— FINLEY POINT (4:36 pm)**

Robert Costa presented the staff report. (See attachments to minutes in the Sept. 2013 meeting file for staff report.)

Steve referred to the second paragraph of #7 on pg. 13, and clarified with Robert that on the west side, the west corner of the existing deck was where they were close to the lake. Sue asked where the 20-foot line was. Robert described the far left deck area, and also a

bit of the stairs projected out into the lakeshore protection area. They discussed this on the map.

Steve asked about the minimum variance that would alleviate the hardship. The described hardship involved handicap access and maintenance on the north side of the building. The deck extended 16 feet in front of the house, which was a nice size for entertaining; he didn't know that 16 feet was required for maintaining the structure on the north side of the house. How did they justify that this was the minimum variance to alleviate the hardship? Robert replied the Board would work that out. Robert had suggested to the applicants to make this as minimal as possible over the year they'd been working on this. He would have liked to see less but this appeared reasonable to him. The applicants did want the deck for handicap access and to maintain that northern wall and a little bit of entertainment area. It was hard to see on this section. There wasn't another place to put a deck addition outside of the maintenance. LaDana added that when they stood on the site and took measurements, it was a substantial distance between the ground level and the deck height. The area there was vegetated and there was a lot of bedrock. There wasn't much else they could do on the property. Maybe 16 feet was reasonable because they didn't have an area where they could be out and enjoy the lake on that side of the house. Steve explained that his concern was if they approved this because they thought it was the minimum to alleviate those hardships, he thought they should have a comment in there that it would not be useful to the applicants at a smaller size, so someone didn't come back and say only 4 or 5 feet were needed to maintain the front of the building.

Judging from the pictures, Paul agreed with LaDana, especially for the handicapped. Also that was the view side. Steve agreed too. He was concerned about how to word it. There were some practical uses for the deck outside of maintenance, and less than 16 feet might not meet that objective.

Sue agreed with them to an extent. Sixteen feet seemed larger than what would be the minimum. She noticed on the drawing that they would be adding new doors in place of windows to access the deck from the house. She saw it as creating more living space as well, instead of just access space. Also, either new or existing stairs would be difficult for handicapped access. On the left side of the elevation drawing, Robert pointed out the only doorway and deck on that side of the structure, which were somewhat difficult to see in the drawing. The owner was getting older and anticipated more difficulty going up and down stairs. His understanding was that maybe she couldn't go down the stairs but her family could.

Sue checked about the other house on the property. Robert explained that it was built prior to the adoption of the regulations.

*Public comment opened: None. Public comment closed.*

Robert noted a correction in the findings on pg. 16, item b. The first sentence that talked about a guest house was an error on his part. The 'guest' should be taken out.

Sue thought 16 feet was pretty large for access and maintenance on a non-conforming expansion into the lake side. Steve said that was why they would need to add another use to the deck. He didn't see a problem with the stairs. He didn't think they expanded the area of the deck very much into the setback area. Stairs were important as an alternative way to get off the deck in an emergency or fire, even if the disabled person had to be carried down the steps. His concern was with the depth of the deck. Sue agreed the deck size was more compelling. The size came into the play with the hardship, wanting a certain size deck and not necessarily the minimum relief. When the Board did some of these things in the past, they've come back to bite the Board. She appreciated that the applicants came to ask. Paul thought maybe 16 feet looked bigger on the drawings than on the property itself. They were a long way above the lake on a steep, rugged piece of property.

Steve asked what the contour interval on the LiDAR map was. LaDana said it was usually 2 feet. Robert thought that on the left side, they would be 11 feet up. Sue asked if vegetation would grow under that. Someone commented that what would grow there was growing there already. Steve asked if the last sentence in 15.a. on pg. 16 would need expansion to justify a deck with a 16-foot depth, or if that was somewhere else. Joel pointed to 15.g on pg. 17. Robert thought 15.g would be the place. Steve noted 15.a referred to reasonable and safe access to the structure's northern wall. Robert replied it was a specific answer to the question for a, which he read. Steve asked if reasonable use included some outdoor living space. Robert said staff were saying this was reasonable. Steve thought that would be an answer to 15.a. It was unfortunate that the people weren't here to say what they would think of a 10-foot or 12-foot deck. Robert said they understood the risk taken in proposing 16 feet. They also knew they could come back and propose something different.

Hu Beaver, a builder present, demonstrated the difference between 16 feet and 12 feet with a tape measure on request. Sue said 10 to 12 feet seemed reasonable to her. She wasn't comfortable with 16. Paul agreed with her in some areas. With this particular structure located where it was, he didn't think the 16 feet would be an issue. He thought Steve raised a good issue. He thought extra room was needed on the deck for the handicapped.

*Steve recommended adding to the end of 15.a.: "and a functional, useful deck." He checked if 15.g also needed an addition. Robert suggested adding the same phrase to the second sentence, and Steve suggested placing it after "a continuous, connected walkway".* Sue asked what a functional, useful deck would be down the road. Steve asked where the size of the deck was located in the conditions. Robert pointed out condition 1. Steve checked that if they were to change the depth of the deck in the approval to 12 feet, where it would go. Joel thought it would be a condition. He wasn't sure if the deck was measured from the wall or the eave. Sue thought it would be from the wall. Steve said they needed to say that this approval allowed a deck to be built that extended a maximum of 12 feet from the existing structure. In #3, the numbers would need to be fixed accordingly. Would they add a condition?

Robert thought it could be another condition recommending or specifically approving something, or changes might be made to condition 1. Joel suggested to shave the northernmost 4 feet off the deck as shown on the site plan. Steve referred to the first sentence in condition 1. Sue continued that the first sentence could say the variance approval is to allow the expansion of an existing, non-conforming residence on the subject property, not to exceed 12 feet and plans to be resubmitted indicating that. Steve asked if they needed zoning conformance. Robert indicated that had been submitted. He forwarded Joel's point that if you shave off the length, you also shaved off the stairs. Steve said they would have to redesign this. It could be done. He talked about redistributing the steps in relationship to the landing so they could end up at the desired elevation without having to go 16 feet.

Steve asked Sue to repeat the revision for condition 1. Sue and Steve worked together to say 'the variance approval is to allow the expansion of an existing, non-conforming residence on the subject property, in order to permit the construction of a deck addition not to extend more than 12 feet from the north wall of the existing structure'. Robert confirmed that they eliminated 'as indicated on the submitted plans'. He and Sue arrived at 'as indicated on the submitted plans and modified by the Board of Adjustment'.

Sue reread the modified first sentence as, *"The variance approval is to allow the expansion of an existing, non-conforming residence on the subject property, as indicated on the submitted plans and modified by the Board of Adjustment, in order to permit the construction of a deck addition not to extend more than 12 feet from the northern wall of the existing structure."*

Joel asked about the setbacks. Robert noted the Board could direct him to modify that section. Steve said the square footage would change and some of the setbacks. Sue mentioned that he wanted to make note in the findings of fact of those changes and additions. Steve summarized they had two changes on pgs. 16 and 17 [for 15.a and 15.g]. Robert thought he had those. Joel suggested looking at condition 8. It was true, but they'd modified square footage. *Sue observed the second sentence of condition 8 should read, "As shown on the submitted and modified plans...." Steve directed the square footage to be updated there in condition 8, and also in condition 4 as needed.*

**Motion made by Steve Rosso, and seconded by Paul Grinde, to approve the variances with findings of fact, including modifications to finding 15.a and g, and the conditions and terms including changes to condition #1 and #8 that will then require corrections to the numbers in conditions #3, 4 and 8. This [approval] would also include the removal of 'guest' in finding 15.b and a correction to condition #7 where the duplicate 'shall be contained' in the first line shall be removed. Motion carried, all in favor.**

**JABBR LLC CONDITIONAL USE—UPPER WEST SHORE (5:14 pm)**

LaDana Hintz presented the staff report and letter of comment handout from the Lake County Environmental Health Department to address their concerns. (See attachments to minutes in the Sept. 2013 meeting file for staff report and handout.)

Steve said that because this would receive zoning conformance review, it meant some of the issues with setbacks and possibly moving the house to allow for septic field expansion would be worked out at that time. LaDana emphasized the Board would be approving impervious surface coverage, and that would be based on the aggregation of lots. The conditions were in place to address the aggregation. They couldn't get a zoning conformance permit until the aggregation happened and until they addressed the sanitation issues.

Hu Beaver, the applicant's contractor, spoke on behalf of the application. It was presented well. They would use Best Management Practices. The conditions would be met. The house was an 1800 square foot house with a daylight basement. You wouldn't think you'd reach the impervious limit with that size of house on a double lot. They went for the variance and it seemed to work well.

*Public comment opened: None. Public comment closed.*

**Motion made by Sue Laverty, and seconded by Paul Grinde, to approve the conditional use with staff conditions, findings of fact and staff report. Motion carried, all in favor.**

**SHARP/ HAWK VARIANCE—UPPER WEST SHORE (5:24 pm)**

LaDana Hintz presented the staff report. A site map and public comment were provided as handouts. (See attachments to minutes in the Sept. 2013 meeting file for staff report and handouts.) She corrected item #3 on pg. 12 from a 30-year old structure to an 8-year old structure. On condition #5, pg. 21, she spoke to applicant's concerns about no disturbance of the vegetative buffer zone or Lakeshore Protection Zone. She didn't think that would be an issue, and pointed out that it did say 'unless approved by Lake County'. Disturbances needed to be approved. The applicant thought there would be some disturbance when he did his stormwater infrastructure. When the lakeshore construction permit was reviewed, staff would probably put conditions on that. She thought what was here was reasonable to approve it tonight.

Steve referred to item #6 on pg. 13, where a vertical expansion would be considered an expansion of a nonconformity. They had a 30-foot height limit on a building here. This building was changing from 11 to 13 feet. LaDana explained that the building was in the setbacks. Steve checked if the height was part of the nonconformity. LaDana explained the bulk of the building would be expanded. Joel added it was about the bulk. A building wasn't allowed in the setbacks. This would essentially be putting more building in the setbacks. Steve said he hadn't realized both horizontal and vertical movements in the setbacks would be an issue.

Sue noted in #6 on pg. 13, the end of the first sentence should read 'for over 80 years', with 'old' at the end being dropped. She thought this was a lot that really needed a variance.

Guy Sharp spoke on behalf of his applicant. He thought the staff report was well done and complete, and offered to answer questions. He pointed out that the mention and picture of a boat shelter weren't from his lot. Sue noted they should delete photo 4 and mention of lake related improvements with a dock.

Steve asked Guy about where his septic drainfield was. Guy replied that he owned the property across the road. The septic shown on the site plan was a [inaudible] pump lift station that went to a septic tank on the other side of the road, addition to the other cabin and that went to an elevated sand mound at the top of the hill. It was a new system. LaDana added that Sanitation didn't have a problem. Steve said the new site plan received today showed lot 21, 20 and 19 on the other side of the road. Guy confirmed that he owned those lots, and that there was a home there.

Steve commented that this part of development on the lake had a lot of little lots on the lakeside of Rollins Lakeshore Drive. When the zoning regulations were written, there were some issues about grandfathering and what happened when improvements on these houses were made. When those regulations were developed, the idea was that these nonconforming structures that were so close to the lake and put the lake at risk would slowly go away. He thought it was one of those things. A building so close to the lake eliminated the benefits of a good healthy buffer that used nutrients out of the stormwater and those kinds of things that could occur close to the lake. He wasn't saying that he or the Board wouldn't approve this. He did think that as a result, continuing to improve and maintain these little cabins built 80 years ago was something that in general they might not want to do. He just wanted to let people know that there was some resistance to allowing these kinds of activities down there. The idea was that at some point, those would get old and go away, and the opportunity to improve the shoreline to protect the health of the lake would increase.

Joel noted this was an existing tract of record that normally you'd want to allow to be used for a single-family residence. Steve said whether it was aggregated or not, there were several of these small lots around the lake that had been sold together with lots on the other side of the road. There were a lot of the little lots that didn't have buildings on them or had trailer homes removed, where they'd evolved into sort of front yards for the structures and the houses on the other side of the road. He hoped at some point the places that put the lake at risk would be gone. Sue suggested this would be food for thought for the future, in making the property a little more lake-friendly, filtering when doing your stormwater management plan. It'd be very helpful to put a lot of thought into that, and conducive to the lake too. Steve suggested that the next time Guy's family looked at updates or improvements to this cabin, they consider adding to the house away from the lake instead, and let this one go away.



LaDana pointed out that the picture in the staff report was of the house away from the lake. It was a tiny cabin too, and was also non-conforming. He would have nothing. Did that seem reasonable? He happened to have the lots across the road; they could be sold separately. Steve understood. He just wanted to make sure people were aware of the history behind the zoning regulations and could understand some resistance to improving these. Guy understood that he was thwarting that process by extending the life of the cabin, but they were just in love with it. Steve suggested letting people using the cabin know that it was probably closer to the lake than was healthy for the lake. When you were living down there, you had to pay a little more attention to the way you lived and make sure that stuff didn't get into the lake. He suggested if the applicant could tolerate some bushes in the little bit of ground there, those would use nutrients out of the stormwater before it ran into the lake. It was better to have green bushes on the shore than green algae in the lake. Vegetation around the cabin would help the health of the lake.

Guy said that if the variance was approved, he and his wife would take over that lower cabin and that responsibility with this renovation. The extended family would be relegated to across the street. Paul said with [Guy] standing [in the picture], it looked like it needed a roof on it.

*Public comment opened: None. Public comment closed.*

Paul appreciated Steve's comments. On the other hand, it looked like a very reasonable thing to do. Steve agreed, and appreciated that the building size would not be expanded and the amount of open ground was not reduced.

**Motion made by Paul Grinde, and seconded by Sue Lavery, to approve the variance with staff recommendations and findings of fact. Motion carried, all in favor.**

#### **OTHER BUSINESS**

The next meeting was touched upon.

**Sue Lavery, acting chair, adjourned the meeting at 5:45 pm.**